1664.

SUPREME COURT OF THE UNITED STATES.

No. 169.

JAMES B. TELLER & THOMAS W. SWINNEY, PL'FFS IN ER.,

vs.

JONATHAN T. PATTEN & JOHN J. LANE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

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Pleas of the United States circuit court for the seventh judicial circuit and district of Indiana, begun and holden at Indianapolis, in said district, before the honorable Elisha M. Huntington, on the twentieth day of November, in the year of our Lord one thousand eight hundred and fifty-five.

JONATHAN N. PATTEN and JOHN J. LANE
v.
JAMES B. TELLER and THOMAS SWENEY. } In assumpsit.

Be it remembered that heretofore, to wit, on the 17th of April, 1855, the plaintiffs in this suit filed in the clerk's office of said court, their certin declaration against the defendants, which declaration is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
District of Indiana.

In the circuit court of the United States, at May term, 1855.

Jonathan T. Patten and John J. Lane, partners trading and doing business under the name, style, and firm of Patten & Lane, citizens of the State of New York, plaintiffs, complain of James B. Teller and Thomas Sweney, citizens of the State of Indiana, defendants, in a plea of trespass on the case upon premises, for that whereas, heretofore, to wit, on the 16th day of August, in the year 1854, at New York, to wit, at the district aforesaid, said defendants, by the name, style, and description of James B. Teller & Co., made their certain promissory note in writing of that date, and thereby, then and there, for value received, promised to pay five months after the said date thereof, to the order of said plaintiffs, by their copartnership name of Patten and Lane, "at the office of Messrs. Allen, Hamilton & Co., Fort Wayne, Ind.," thereby meaning at the office of certain persons known and doing business under the name, style, and description of Allen, Hamilton & Co., in Fort Wayne, in the State of Indiana, the sum of eight hundred and thirty-eight dollars and fifty-eight cents, with the current rate of exchange on New York, thereby meaning the city of New York, in the State of New York, and then and there delivered the said promissory note to said plaintiffs. And plaintiffs aver that the rate of exchange between the State and district of Indiana, and the city of New York in the State of New York, when the said note became payable, was two per cent. on the amount thereof in favor of said city of New York, in the State of New York, which the defendants

became liable to pay, and being so liable to pay the said exchange on the said promissory note, and to pay the said note, said defendtants, afterwards, to wit, on the day and year aforesaid, in consideration thereof, undertook and faithfully promised the plaintiffs to pay the same, according to the tenor and effect of the said note.

2. And also for that, whereas, heretofore, to wit, on the day and year aforesaid, at New York, to wit, at the district aforesaid, said defendants, by the name, style, and description of James B. Teller & Co., made their other certain promissory note in writing of that date, and thereby then and there, for value received, promised to pay six months after the said date thereof, to the order of said plaintiffs, by their co-partnership name of Patten & Lane, "at the office of Messrs. Allen, Hamilton & Co., at Fort Wayne, Ind.," thereby meaning at the office of certain persons known and doing business under the name, style, and description of Allen, Hamilton & Co., in Fort Waye, in the State of Indiana, the further sum of eight hundred and thirty-one dollars and thirty-nine cents, with the current rate of exchange on New York, thereby meaning the city of New York, in the State of New York, and then and there delivered the said promissory note to said plaintiffs; and plaintiffs aver that the rate of exchange betweeu the State and district of Indiana and the city of New York, in the State of New York, when the said note became payable was two per cent. upon the amount thereof in favor of the city of New York, in the State of New York, which the said defendants became liable to pay; and being so liable to pay the said exchange on the said last mentioned promissory note, and to pay the said note last aforesaid, said defendants afterwards, to wit, on the day and year aforesaid, in consideration thereof, undertook and faithfully promised the plaintiffs to pay the same, according to the term and effect of the said note last aforesaid.

3. And also for that, whereas, heretofore, to wit, on the day and year aforesaid, at New York, to wit, at the district aforesaid, said defendants, by the name, style, and description of James B. Teller & Co., made their certain other promissory note in writing of that date, and thereby then and there, for value received, promised to pay to the order of said plaintiffs, by their co-partnership name of Patten & Lane, "at the office of Messrs. Allen, Hamilton & Co., at Fort Wayne, Ind.," thereby meaning at the office of certain persons known and doing business under the name, style, and description of Allen, Hamilton & Co., in Fort Wayne, in the State of Indiana, the further sum of eight hundred and thirty-eight dollars fifty-nine cents with the current rate of exchange on New York, thereby meaning the city of New York, in the State of New York, and then and there delivered the said promissory note to said plaintiffs; and plaintiffs aver that the rate of exchange between the State and district of Indiana and the city of New York, in the State of New York, when the said note became payable, was two per cent. upon the amount thereof, in favor of the city of New York, in the State

of New York, which said defendants became liable to pay; and being so liable to pay the said exchange on the said last-mentioned promissory note, and to pay said note last aforesaid, said defendants, afterwards, to wit, on the day and year aforesaid, in consideration thereof, undertook and faithfully promised the plaintiffs to pay the same, according to the term and effect of the said note last aforesaid.

4. And also for that, whereas, heretofore, to wit, on the 18th day of October, in the year 1854, at New York, to wit, at the district aforesaid, said defendants, by the name, style, and description of James B. Teller & Co., made their certain other promissory note in writing of that date, and thereby then and there, for value received, promised to pay, thirty days after the said date thereof, to the order of said plaintiffs, by their co-partnership name of Patten and Lane, at the branch of the State bank of Indiana, at Fort Wayne, the further sum of eight hundred and seventy-four dollars and eighty-five cents, with the current rate of exchange on New York, thereby meaning the city of New York, in the State of New York, and then and there delivered the said note to said plaintiffs; and plaintiffs aver that the rate of exchange between the State and district of Indiana and the city of New York, in the State of New York, when the said note became payable, was two per cent. on the amount thereof in favor of the city of New York, in the State of New York, which said defendants became liable to pay; and being so liable to pay the said exchange on the said promissory note, and to pay the said note last aforesaid, said defendants, afterwards, to wit, on the day and year last aforesaid, in consideration thereof, undertook and faithfully promised the plaintiffs to pay the same, according to the term and effect of the said note last aforesaid.

5. And whereas, also, said defendants, on the 1st day of April, 1855, at the district aforesaid, were indebted to said plaintiffs in the sum of three thousand dollars for the price and value of work then and there done, and materials furnished for the same by said plaintiffs for said defendants at their request; and in the sum of four thousand dollars for money then and there lent by said plaintiffs to said defendants at their request; and in the sum of three thousand dollars for money then and there had and received to and for the use of the plaintiffs by said defendants; and in the sum of three thousand dollars for money found to be due to said plaintiffs from said defendants on an account then and there stated between them; and in the sum of four thousand dollars for divers goods, wares, and merchandise by the said plaintiffs before that time sold and delivered to said defendants at their special instance and request; and being so indebted, they, the said defendants in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, undertook and then and there faithfully

promised the said plaintiffs to pay the said last mentioned several sums of money on request.

Nevertheless, the said defendants, not regarding the said promises made by them as aforesaid have not as yet, paid the said sums of money, or either of them, or any part thereof. But to pay the same, or either of them, or any part thereof, the said defendants have hitherto wholly neglected and refused, and still wholly neglect and refuse so to do, to the damage of the plaintiffs of five thousand dollars. Hence, they sue.

S. YANDES,
Attorney for Plaintiffs.

And thereupon a summons issued from said clerk's office against the said defendants, returnable according to law, and delivered to the marshal of said district of Indiana, who returned the same into the office of the said clerk, "served as commanded in and by said writ of summons."

And afterwards, to wit, at a circuit court of the United States, begun and holden at Indianapolis, in said district of Indiana, before the honorable Elisha M. Huntington, judge of said court, on the 23d day of May, in the year 1855,

Come the parties by their attorneys; and Thomas Sweeney, one of the defendants, filed the following plea, to wit:

Said Thomas Sweeney, by R. Crawford, his attorney, comes and defends, etc., and says he did not assume and promise in manner and form as the plaintiffs have complained against him, and of this he puts himself on the country, and prays judgment, etc.

R. CRAWFORD,
P. D.

And the plaintiffs, likewise, etc.

SMITH & YANDES,
For Pltff.

Said Thomas Sweeney makes oath, and says his plea by him above pleaded in the above named action is true, in substance and matter of fact, to the best of his knowledge, information, and belief.

THOMAS W. SWINNEY.

Subscribed and sworn to in open court this 22d of May, 1855.

HORACE BASSETT,
Clerk.

And thereupon, this cause is continued until the next term of this court.

And afterwards, to wit, at a circuit court of the United States for the 7th judicial circuit and district of Indiana, begun and holden at Indianapolis in said district, before the honorable Elisha M.

Huntington, judge, as aforesaid, on the 19th day of November, in the year 1855—

Come now the plaintiffs, by O. H. Smith, esq., their attorney, and on his motion depositions herein filed are ordered to be published, and day is given.

And afterwards, to wit, on the 29th day of November, being the 10th judicial day of said November circuit court, before the same judge as aforesaid—

The plaintiffs, by Smith & Yandes, their attorneys, now come, and thereupon the said Teller, one of the said defendants, although three times loudly called, comes not, but herein wholly makes default; and it appearing to the satisfaction of the court that the process in this cause has been served upon the said Teller more than thirty days prior to the first day of the present term of this court, it is considered that the plaintiffs, so far as relates to said Teller, recover their damages. And thereupon the said plaintiffs and said Sweeney come and now move the court reciprocally to suppress certain questions and answers in the deposition on file taken by each of the parties, specifications of which are furnished the court, and after argument the court give further day to hear their judgment thereon.

And afterwards, to wit, on the 3d day of December, that being the 12th judicial day of said term as aforesaid, before the same judge as aforesaid—

The plaintiffs, by Yandes and Smith, esqrs., their attorneys, come, and the said Sweeny, one of said defendants, by R. Crawford, esq., his attorney, comes also; and the court, being advised of the motion to suppress depositions, sustain the motion of each party so far as the court has endorsed the same on the several depositions by the word "sustained," and overrule the same so far, and as to the depositions are not so marked; and day thereof is given to the parties.

And afterwards, to wit, on the 6th day of December, 1855, that being the 15th judicial day of the same November term as aforesaid, before the same judge as aforesaid—

Come the parties by their attorneys, and the issue being joined, a jury is called, to wit: Samuel Cory, Ila Reeves, Daniel Moore, John S. Stewart, John T. Hilligss, Richard D. Slater, Henry Bigler, Demoss McFarland, Benjamin F. Spann, Samuel Addison, William Campbell, and Aaron Wright, twelve good and lawful men of the district of Indiana, who, being empanelled and sworn to well and truly try the issue joined, and assess the damages, after hearing a portion of the evidence, separate until to-morrow.

And afterwards, to wit, on the 7th of December, 1855, that being the 16th judicial day of the same November term as aforesaid, before the same judge as aforesaid—

Come now the parties by their attorneys, and the jurors of the jury came also; and after hearing the remainder of the evidence and a portion of the argument of counsel, separate, by leave of parties, until to-morrow morning, 9 o'clock.

And afterwards, to wit, on the 8th of December, 1855, that being the 17th judicial day of the same November term, as aforesaid, before the same judge as aforesaid—

The plaintiffs now come, and the defendant Sweeney comes also, and thereupon comes the jury; and they having heard the argument and charge of the court, retire to their room under the charge of a sworn bailiff and after some time now return into court in the charge of the bailiff attending them, and render their verdict in open court, in these words: "We, the jury, find for the plaintiffs on the issue joined, and assess their damages against the said dedefendants, Teller and Sweeney, at three thousand five hundred and sixty-five dollars and ninety-three cents, $3565,\frac{93}{100}$.

SAMUEL CORY,
Foreman.

And thereupon the plaintiffs, now freely in court, enter a remitter of the sum of eight hundred and forty-five dollars and fifty-three cents ($845,\frac{53}{100}$) of the amount found by the jury, the amount of said remitter being credits upon one of the notes declared upon, which were not taken into the assessment by the jury, by which remittance the verdict of the jury is reduced to the sum of twenty-seven hundred and nineteen dollars and forty cents, ($2719,\frac{40}{100}$,) for which sum, with costs, the plaintiffs move the court for judgment, and day is given to the parties.

And afterwards, to wit, on the 18th judicial day of the same November term of said court, before the same judge as aforesaid—

Comes now defendant, by his attorney, and moves the court for a new trial herein, and day is given the parties.

And afterwards, to wit, on the 20th judicial day of the same November term of said court, before the same judge as aforesaid—

Come the parties; and the defendant, Swinney, files, as a reason for a new trial, that the court erred in an instruction given to the jury, and refusing an instruction asked by said Swinney; and the court, after arguments of counsel are heard, and the matters of the same are duly considered, overrule said motion, and refuse to grant a new trial.

It is therefore considered that the plaintiff recover of the defendants two thousand seven hundred and nineteen dollars and fourteen cents, part of their damages assessed as aforesaid, together with their costs in this suit expended, taxed at dollars and cents and the defendants in mercy, etc.

And said Swinney therefore files his two bills of exceptions to the decisions and rulings of the court herein, which are in the words and figures following, to wit:

IN UNITED STATES CIRCUIT COURT FOR INDIANA.

PATTEN and LANE
v.
TELLER and SWENEY.

Be it remembered, that after issue was joined in this action upon said Swinney's plea of non-assumpsit, the plaintiffs filed herein their deposition of several witnesses, which tended to prove that said Swinney was a partner of said Teller, and had, by his declarations and conduct at Fort Wayne, on divers occasions, in 1852 and 1853, held himself out to the world as a partner of said Teller, who was then doing business as a merchant at that place, as the plaintiff contended with said Swinney, and said Swinney had suffered said Teller to hold him out as such partner; also the deposition of Thomas P. Anderson, tending to prove that he, in April, 1852, had introduced said Swinney to divers merchants in the city of New York, including the plaintiffs, as a person wishing to buy goods for Fort Wayne, and as the father-in-law of said Teller, and the capitalist of the concern, which said Swinney did not deny. And said Swinney having filed in this action the depositions of several witnesses, the plaintiff then moved the court to suppress that part of the deposition of Solomon D. Bayless, one of said Swinney's witnesses, wherein he testified that said Swinney left Fort Wayne in company with the witness, about the 15th of April, 1852, to go to New York, to purchase boots and shoes for Mr. Teller, as Swenney said, and the witnesses for Swinney roomed together. At different times there were conversations between said Swinney and various persons in the room of said Swinney and the witness; it not appearing whether the plaintiff, or either of them, was present, during which some of said persons who wished to sell goods to him, asked said Swinney how many boots and shoes he wanted to buy; said Swinney answered them by saying, he wished to purchase a little stock to start said Teller, his son-in-law, in business; that he had as much money as he wanted to invest to give Mr. Teller a start, and if he did well, he might help him more; and if he did not, it was as much as he wanted to give him. Some of the persons asked said Swinney if he intended to be a partner with said Teller, and he answered that he had no further interest or connexion in the matter than that Teller was his son-in-law, and he wanted to see him do well, and he was not to be a partner. Said Swinney before going to New York was acquainted with Mr. McMakin, John Bulyer, William Farmer, Mr. Neals, Charles Alyesworth, Mr. Perviener, Joseph Williams, Isaac Williams, and Mr. Sangly, who were business men of New York, and the witness introduced him to a number of merchants of New York at said Swinney's room. These introductions were a week or more before said Thomas P. Anderson arrived at New York. After wit-

ness returned from New York, and during the years 1852 and 1853, he always heard said Swinney say, when the subject was mentioned, that he was not a partner of Teller. This occured several times, and some of them as early as the fall of 1852. When in New York, the witness enquired of said Swinney about his connexion with the anticipated boot and shoe store, for the purpose of knowing how to introduce him to the New York merchants, and Swinney told the witness he was to have no connexion with the store as a partner and the witness introduced him in that way, to all to whom he did introduce him. All of which conversations and statements of said Swinney were had and made when it did not appear that the plaintiffs, or either of them, was present, nor were they a part of any statements or acts of said Swinney as proved by the plaintiffs, but, at other timesand places, were made if it at all.

The plaintiffs also moved to suppress those parts of the several depositions of Nathan Coleman, Robert Leard, Joshua Holmes, and Joseph Breckenridge, other witnesses of said Swinney, wherein said witnesses severally testified, that on the trial of one Michael Dougherty, for larceny, in the Allen common pleas court at Fort Wayne, in January, 1853, said Swinney and Teller were both called as witnesses, and both swore, in the absence of plaintiffs, that said Swinney was not a partner with said Teller, and never had been, and never had any interest in said Teller's store. And said Swinney contended that said parts of said depositions were competent evidence in his behalf, as tending to prove that he had not held himself out as a partner, nor suffered Teller to hold him out as such partner. But the court on said motion suppressed the parts of said several depositions, which are above set forth, and would not allow the same to be read as evidence on the trial of this action; yet the court allowed the depositions and oral evidence of the plaintiffs' witnesses, tending to prove as first aforesaid, to be read and given as evidence on said trial. Said witnesses, in behalf of said Swinney, were competent to testify as such in his behalf in this action, and the parts of their depositions so suppressed were pertinent to the issue, and proper to be read on said trial, if the same were competent evidence in behalf of said Swinney.

To the opinion and order of the court suppressing said parts of said several depositions, said Swinney excepted at the time, and now prays that this, his bill of exceptions, be signed and sealed by the court, and made a part of the record in this action, which is done accordingly.

E. M. HUNTINGTON, [SEAL.]

IN THE UNITED STATES CIRCUIT COURT FOR INDIANA.

PATTEN and LANE
v.
TELLER and SWINNEY.

Be it remembered, that this suit was brought to recover the

amount of four several promissory notes, drawn in favor of the plaintiffs, who were merchants in the city of New York, which notes were signed by Teller, one of the defendants, "James B. Teller, & Co.," in the absence of Swinney, and the material question was whether Swinney, the other defendant, was a partner in the house of James B. Teller, & Co., in Fort Wayne, Indiana, where both defendants resided, or held himself out so as to make him a partner as to plaintiffs; that on the trial there was proof tending to show such a partnership; that it was also shown by the bookkeeper of the plaintiffs, that Swinney was in New York, in June, 1854, a period prior to the extension of the notes sued on, and in conversation with Patten and Lane, the plaintiffs, in regard to Teller, and in response to a question of one of the plaintiffs, admitted that he was a partner in the house at Fort Wayne, of J. B. Teller & Co. That on the same visit, and perhaps the same day, it was sworn by two of the daughters of Swinney, that in a conversation at the Astor House, between Patten, one of the plaintiffs, and Swinney, on the same subject, Swinney told Patten that he was not, and never had been a partner of Teller, at Fort Wayne; and after the argument of counsel had been heard, and before the court charged the jury as to the law, the counsel for the defendant requested the court to charge the jury that "if they believed from the evidence that in June, 1854, said Swinney told said Patten in New York that he was not and never had been a partner of said Teller, the plaintiffs could not afterwards deal with Teller so as to bind said Sweeney unless it was proved that Sweeney afterwards in some way authorized Teller anew to bind him." But the court refused to give the instruction so prayed for, and instructed them that "if the jury were satisfied from the evidence that Swiney was actually a partner with Teller, in the establishment at Fort Wayne, his declarations to the contrary to Patten, in New York, could not relieve him from liability in this action.

To the refusal of the court to give the instruction prayed for as aforesaid, and to the instruction given as aforesaid, said Swinney accepted at the time, and prays that this his bill of exceptions may be signed and sealed by the court, and made a part of the record in this action, which is done accordingly.

December 11th, 1855.

E. M. HUNTINGTON, [SEAL.]

And on the same day and year last aforesaid, the following citation, writ of error, and bond were filed in the words and figures following, to wit:

UNITED STATES OF AMERICA, *ss:*

To the judges of the circuit court of the United States, for the circuit and district of Indiana, greeting:

Because in the record and proceedings, and also in the rendition

of a judgment in a plea which is in the said circuit court, before you, between Jonathan T. Patten and John J. Lane, and James B. Teller and Thomas W. Swinney, a manifest error has happened to the great damage of said Teller and Swinney, as by their complaint appears, and it being fit that the error, if any there be, duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, then, that you, under your seal, distinctly and openly, send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December, 1856, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid, being inspected, said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this 12th of December, in the year of our Lord 1855, and of the independence of the United States the eighty-first.

[SEAL.]

HORACE BASSETT,
Clerk of said Circuit Court.

UNITED STATES OF AMERICA, *ss:*

To Jonathan T. Patten and John J. Lane, greeting:

You are hereby cited and admonished to appear at a Supreme Court of the United States, to be holden on the first Monday of December, 1856, pursuant to a writ of error filed in the office of the clerk of the circuit court of the United States in and for the district of Indiana, wherein Thomas W. Swinney is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this 12th day of December, 1855.

E. M. HUNTINGTON,
One of the Justices of said Circuit Court.

I enter my appearance for the defendants in error, Patten & Lane, and say that there is no error in the record and proceedings—the case not to be called in the Supreme Court until the next term.

O. H. SMITH,
For Patten and Lane.

JAMES B. TELLER & Thomas B. Swinney
v.
PATTEN and LANE. } In error.

Know all men, that we, Thomas W. Swinney and John S. Newman are held and bound unto said Patten and Lane, the defendants in error in the above entitled suit, in the sum of five thousand dollars, to be paid to said Patten and Lane, their executors or administrators, respectively; and to such payment we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated December 12th, 1855.

Whereas, said Thomas W. Swinney has prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above-entitled suit by the circuit court of the United States for the district of Indiana, therefore the condition of this obligation is such, that if the above-named Thomas W. Swinney shall prosecute said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, this obligation shall be void, otherwise the same shall remain in full force.

THOMAS W. SWINNEY, [SEAL.]
JOHN S. NEWMAN, [SEAL.]

Sealed and delivered in presence of—

I approve the above bond and security.

E. M. HUNTINGTON,
United States Judge for Indiana.

DISTRICT OF INDIANA, *ss:*

I, Horace Bassett, clerk of the circuit court of the United States for the 7th judicial circuit and district of Indiana, do hereby certify, that the within and foregoing is a true and complete transcript from the records now in my office in the above entitled case.

In witness whereof, I hereto set my hand, and affix the seal of said circuit court, at Indianapolis, this nineteenth day of [SEAL.] December, in the year of our Lord one thousand eight hundred and fifty-five.

H. BASSETT,
Clerk U. S. C. C. Dis't of Ind.

JAMES B. TELLER & THOMAS SWENEY
v.
JONATHAN T. PATTEN & JOHN T. LANE.

Said Teller & Sweney come and say there is manifest error in the proceedings and judgment aforesaid in this:

1st. That s'd circuit court erred in suppressing that part of

Solomon D. Byless' deposition which is stated in the first bill of exceptions, and in permitting the depositions and oral evidence of the plaintiffs, tending to prove as is stated in s'd bill of exceptions to be given to the jury.

2d. That s'd court erred in suppressing the parts of the depositions of Nathan Coleman, Robert Leard, Joshua Holmes, and Joseph Breckenridge, which are stated in s'd bill of exceptions, and in permitting the depositions and oral evidence of the plaintiffs, tending to prove as is stated in s'd bill of exceptions, to be given to the jury.

3rd. That s'd court erred in refusing to give the instruction to the jury prayed for by the defendant, as stated in the second bill of exceptions, and in giving the instruction as stated in s'd second bill of exceptions.

Wherefore s'd Teller & Swenney pray that s'd judgment be reversed and they restored, &c.

R. CRAWFORD.

I waive all objections to the not filing of the record in time, and say, inmelo est erratum.

June 4th, 1856.

O. H. SMITH,
For Appellees.

UNITED STATES OF AMERICA, *ss:*

To the judges of the circuit court of the United States for the circuit and district of Indiana, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said circuit court before you, between Jonathan T. Patten & John J. Lane, vs. James B. Teller & Thomas W. Swinney, a manifest error has happened, to the great damage of said Teller & Swinney, as by their complaint appears, and it being fit that the error, if any there be, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, then that you, under your seal, distinctly and openly, send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December, 1856, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this 12th of December, in the

year of our Lord 1855, and of the independence of the United States the eighty-first.

HORACE BASSETT, [L. S.]
Clerk of said Circuit Court.

UNITED STATES OF AMERICA, *ss:*

To Jonathan T. Patten and John J. Lane, greeting:

You are hereby cited and admonished to appear at a Supreme Court of the United States to be holden on the first Monday of December, 1856, pursuant to a writ of error filed in the office of the clerk of the circuit court of the United States, in and for the district of Indiana, wherein James B. Teller and Thomas W. Swinney is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this 12th day of December, 1855.

E. M. HUNTINGTON,
U. S. Dist. Judge for Indiana.

I enter an appearance for said Patten & Lane in said Supreme Court of the United States, and I say there is no error in the record and proceedings in said suit. Said suit is not to be called in the Supreme Court until next term, December 12, 1855.

O. H. SMITH;
Atty. for Patten & Lane.